

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
The Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

TO: The Commission

Comments
of
Vanguard Cellular Systems, Inc.

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Federal Communications Commission
Office of the Secretary

1. Vanguard Cellular Systems, Inc. ("Vanguard") is the third largest pure non-wireline cellular telephone company in the United States, owning or controlling the Federal Communications Commission non-wireline cellular licensee's in 21 markets on the East Coast. Vanguard's stock is publicly traded on the NASDAQ National Market System. Vanguard is a member of the Cellular Telecommunications Industry Association, which is the trade association of the cellular industry. On April 10, 1992, the Commission adopted a Notice of Proposed Rulemaking in the above-captioned proceeding. The Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking, CC Docket No. 92-90, FCC 92-176, released: April 17, 1992 ("NPRM"). The purpose of the NPRM was to seek public comment on the Telephone Consumer Protection Act of 1991, 47 U.S.C. Sec. 227 (the "TCPA"), which was enacted on December 20, 1991. Section 227(b)(1)(A)(iii) of the TCPA prohibits the use of an automatic telephone dialing system to call any telephone number assigned to a cellular telephone service or any service for which the called party is

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charged for the call. Section 227(b)(2) empowers the Commission to prescribe regulations to implement the requirements of the TCPA.

2. In Paragraphs 15 and 16 of the NPRM, the Commission recognizes the legitimate use of automatic telephone dialing systems ("auto dialers") by business "to improve the efficiency of their debt collection practices." The Commission states that it does not appear that the use of auto dialers to assist in debt collection was intended to be prohibited by the TCPA, and tentatively concludes that such use falls under its "proposed exemption for commercial calls that do not offer a product or service and do not adversely affect privacy concerns". Vanguard agrees that such use of auto dialers was not intended to be prohibited by the TCPA, and further, submits that under the plain language of the TCPA its current use of an auto dialer in its debt collection process is not prohibited.

3. Under the TCPA, an "automatic telephone dialing system" is defined as equipment which has the capacity to "store or produce telephone numbers to be called using a random or sequential number generator" and "to dial such numbers" (emphasis added). Vanguard uses an auto dialer in connection with its debt collection process relating to its own customers. However, Vanguard's auto dialer does not and cannot use a random or sequential number generator; rather the specific numbers to be called must be loaded into the system. The auto dialer then dials these customers and immediately delivers answered calls to a live collection representative. It would seem that by definition, the use of an auto dialer in connection with debt

collection would require the provision of the telephone numbers of those accounts which are delinquent. These would be specific telephone numbers of specific customers, not numbers generated randomly or sequentially. In Paragraph 15 of the NPRM, the Commission refers to this type of an auto dialer as a "predictive dialer." Whatever the proper term for an auto dialer with the foregoing characteristics, it does not fall within the definition of "automatic telephone dialing system" under the TCPA because it does not use a random or sequential number generator.

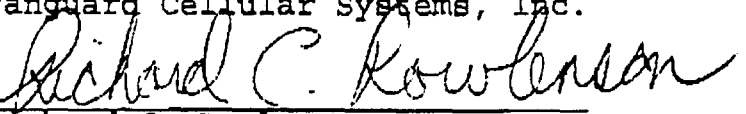
Admittedly, although Vanguard's auto dialer cannot randomly or sequentially generate numbers, it could be the case that some auto dialers may be able to either be provided with numbers or generate the numbers randomly or sequentially. In that case, Vanguard agrees with the Commission's conclusion that the use of auto dialers which have the capacity to either be provided with numbers or generate numbers in connection debt collection should be exempt from the provisions of the TCPA. The use of auto dialers in this context provides the company with increased efficiency and reduced costs in its collection processes. In the end, these efficiencies benefit the consumer by a decreased cost for the product or services provided.

Respectfully Submitted,

Vanguard Cellular Systems, Inc.

Date: May 26, 1992

By:


Richard C. Rowlen
Senior Vice President
and General Counsel